

S B Tripathi vs.sdmc and Anr

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Court : Delhi

Decided On : Feb-12-2018

Appellant : S B Tripathi

Respondent : Sdmc and Anr

Judgement :

\$~81 * IN THE HIGH COURT OF DELHI AT NEW DELHI % + LPA6882016 S B TRIPATHI Date of Judgment:

12. h February, 2018 Appellant Through: Appellant in person. versus SDMC & ANR

... RESPONDENTS

for Through: Ms.Mini Pushkarna, Standing Counsel with Mr.Jasmeet Singh, LI, Najafgarh Zone, SDMC and Ms.Vasundhra Nayyar, Advocate respondent no.1/SDMC. Mr.Anjum Javed, Add. Standing Counsel with Mr.Devendra Kumar, Advocate for respondent/SHO, Police Station-Dwarka. Mr.P.S.Singh, Ms.Annu Singh and Mr.Rajpal Singh, Advocates for respondent no.2. CORAM: HON'BLE MR. JUSTICE G.S.SISTANI HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL G.S.SISTANI, J.

(ORAL) 1. This appeal assails order dated 05.10.2016 passed in the writ petition and order dated 04.11.2016 passed in a review petition. The appellant is a resident of Om Apartments. LPA-688/2016 Page 1 of 6 2. Aggrieved by the act of

the respondents allowing of a Sunday Market by encroaching upon public land i.e. main road from Om Apartments, Sector-14, Pocket-2, Phase-2, Dwarka to Nirmal Bhartiya School and other areas led to the filing of the writ petition.

3. The allegations contained in the writ petition were that a weekly Sunday market was being held in connivance with the officials of the SDMC, police officials with the sole purpose of illegal monetary gains. It was alleged that though an amount of Rs.15/- can be collected from each vendor per sitting but a sum of Rs.115/- is being collected from each hawker at the cost of free movement of traffic and free movement of pedestrians. It was also complained that despite various communications issued to the SHO and DDA being land owing agency, no steps were taken to curtail the weekly market. By an order dated 05.10.2016, learned Single Judge had dismissed the writ petition while taking into consideration the affidavit filed by respondent no.1/SDMC. As per affidavit so filed before the learned Single Judge, the field inspection was carried out and it was found that only on the pavement and on the side of the road, the stalls were found and there was no disruption of traffic at the site. Around 20 photographs were placed on record to substantiate what was stated in the affidavit. The report of SHO, Police Station-Dwarka was also considered by the learned Single Judge. As per affidavit of SHO, the stalls were being held on the side of the road and not on the main road and duration of market was only 3 to 4 hours.

4. By an order dated 04.11.2016, the review petition was also dismissed. Identical submissions are made before us. Endeavour of the court was LPA-688/2016 Page 2 of 6 to streamline the weekly market and to ensure that there is minimum inconvenience to the residents and to ensure that there is free from movement of traffic and the obstructions are not caused by the street vendors while holding the weekly market. The matter was adjourned from time to time to enable the parties to place photographs on record of the area in question. It is the case of the appellant that nothing has changed at the site and weekly market continues to block the pavements and, in fact, even central verge of the road.

5. Counsels appearing for SDMC and the private respondents submit that there is no obstruction being caused and the weekly market is being run in an orderly and

organized manner without causing any hindrance, inconvenience or obstruction in the free flow of traffic and free movement of pedestrians.

6. We have heard the appellant in person and counsels for the respondents. In this matter while issuing notice on 16.12.2016, the following order was passed: LPA6882016 Appellant, who appears in person, submits that he, per se, is not against the weekly bazaar but is against the manner in which norms are being flouted. He submits that the street vendors display their goods beyond the area earmarked. Two meter walk way is not left even for pedestrians. Moreover, the entire road is blocked and there is hardly any movement of traffic. We may note that before the Single Judge, the Police as also the South Delhi Municipal Corporation had filed an affidavit refuting the contentions of the petitioner. The petitioner submits that he is willing for appointment of a Local Commissioner who may take random pictures to show that the affidavit which has been filed by the SDMC is patently false. Learned counsel for the SDMC wishes to take instructions. Let photographs be filed by the SDMC between LPA-688/2016 Page 3 of 6 6:00 pm to 8:00 pm on 18th December, 2016, 25th December, 2016 and 1st January, 2017. Liberty is also granted to the petitioner to take pictures on the said dates also to enable the Court to get a clear picture of the area in question. We expect that the SDMC to faithfully comply with this order as any violation will be viewed strictly. The officer shall file his personal affidavit who would remain present at the time when the photographs are taken. List on 2nd February, 2017. On the next date of hearing, photographs were placed on record by the 7. SDMC and the appellant also placed the photographs on record. An application bearing No.5057/2017 was filed by the appellant, as per which a direction was sought to ensure the presence of the police at the time when he takes photographs of the market in question. In the order dated 08.03.2017, this Court observed that additional photographs have been filed by both the parties showing the condition of the road at the site in question. The appellant had submitted that the weekly market is blocking the pavements and even occupying the area in the middle of the road divider.

8. Ms.Pushkarna, learned counsel for the SDMC has further submitted that there was no obstruction of traffic, the area in question is an open area and there is no

traffic. Accordingly, the street vendors have been allowed to vend alongwith the divider as well.

9. Both the parties are in agreement that some regulations of the market is required. We had requested all the counsels to give suggestions as to how the working of the weekly market can be streamlined. On the next date of hearing, we had noticed that the suggestions have been compiled. We also noticed on 25.09.2017 that as and when the market is manned by the police officials and representatives of SDMC, the LPA-688/2016 Page 4 of 6 street vendors restrict themselves to the area in question, but in their absence the conditions are not complied with.

10. On 17.11.2017, Ms. Mini Pushkarna had informed us that for the last three Sundays the vendors have been vending in an orderly manner, the appellant had however, submitted to the contrary. On 15.12.2017, we were informed that an additional affidavit has been placed on record on behalf of the SDMC along with photographs. We were also informed that the vendors of the weekly market are not being allowed to squat in front of Om Apartments as well as in front of Shaheed Bhagat Singh Apartments. It was also agreed that the parties would place fresh photographs on record which would be taken on 17.12.2017. On 11.02.2018, a joint inspection was carried out and photographs have again been placed on record. During inspection on 11.02.2018, members of the Resident Welfare Association and Section Officer (Administration of SDMC) were also present.

11. The appellant is still dissatisfied in the manner weekly market is being run. We are of the view that the sufficient material has been placed on record before us which we have noticed in the paragraph foregoing. Statements have been made which we have also noticed hereinabove and status report/affidavit have been filed to show that every endeavor would be made to ensure that the street vendors carry out their activities in an ordinary manner without causing inconvenience to the residents and without obstructing free flow of traffic and movement of pedestrians. Binding the respondents to the stand taken by them in the affidavit/status report filed in Court, we are of the view that no further orders are

required to be passed in this Letters Patent Appeal (in short LPA-688/2016 Page 5 of 6 LPA. The local police and officials of respondent No.1 will ensure that the market is run in orders and organized manner in terms of the affidavit/status report placed on record.

12. The appeal is disposed of accordingly. CM No.26586/2017 (direction) The application stands disposed of, in view of order passed in the Letters Patent Appeal (LPA). G.S.SISTANI, J.

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